

OCT 07 2020

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF VENTURA

10
11 ADAM SPARKS; ALYSSA SPARKS,

) CASE NO.

12)
13 Plaintiffs,

) COMPLAINT FOR DAMAGES:

14) 1. BREACH OF WRITTEN
15) CONTRACT;

16 vs.

2. BREACH OF ORAL CONTRACT;

3. NEGLIGENCE;

17 ANDREW KANG a/k/a SUNG KANG;

4. FRAUD;

18 10AK MOTORS LLC; and DOES 1 TO

5. CONVERSION;

19 50, inclusive,

6. ACCOUNTING

20 Defendants.

21) DEMAND FOR A JURY TRIAL
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24)
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26)
27)
28)

Plaintiffs ADAM SPARKS and ALYSSA SPARKS (hereinafter referred to collectively as “PLAINTIFFS”), complain and allege as follows:

I. PARTIES AND JURISDICTION

1. Plaintiff ADAM SPARKS is and at all times relevant hereto has been a resident of the County of Los Angeles, State of California.

2. Plaintiff ALYSSA SPARKS is and at all times relevant hereto has been a resident of the County of Los Angeles, State of California.

3. Plaintiffs are informed and believe, and thereby allege that Defendant ANDREW KANG a/k/a SUNG KANG (hereinafter referred to as “KANG”) is, and at all times relevant hereto has been, a resident of the County of Ventura, State of California, and conducted business therein.

4. Plaintiffs are informed and believe, and thereby allege that Defendant 1OAK MOTORS LLC (hereinafter referred to as "1OAK") is, and at all times relevant hereto has been, a Domestic Limited Liability Company registered with the State of California, duly authorized to conduct business in the County of Ventura, State of California.

5. Plaintiffs are informed and believe, and thereby allege that Defendant IOAK is, and at all times relevant hereto has been, owned, operated, managed, and controlled by Defendant KANG.

6. The contract upon which this action is based was made and was to be performed in the County of Ventura, State of California. Further, Defendants, including KANG, are believed to be residents in the County of Ventura and conduct business in the County of Ventura.

7. The true names and capacities, whether individual, corporate, associate or otherwise of Defendants DOES 1 to 25 are unknown to Plaintiffs, who therefore sues those Defendants by such fictitious names. Plaintiffs will amend this complaint to show the true names and capacities of such fictitiously named Defendants when the same have been ascertained. Plaintiffs are informed and believe, and based thereon allege, that each of the fictitiously named Defendants are indebted to Plaintiffs as hereinafter alleged and that Plaintiffs' rights against the fictitiously named Defendants arise from such indebtedness.

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8. At all times herein mentioned, Defendants DOES 25 to 50 were the agents, servants and employees of Defendants and in some manner were responsible for the events hereinafter mentioned and were acting within the scope of their authority as such agents, servants and employees, with the permission, consent and/or ratification.

II.

STATEMENT OF FACTS

9. The allegations of Paragraphs 1 through 8, inclusive, are re-alleged and incorporated herein by reference.

10. On August 15, 2018, Plaintiff ALYSSA SPARKS was involved in an automobile accident while driving an automobile, specifically a 2011 BMW 328i (hereinafter referred to as “Vehicle”) owned by both Plaintiffs.

11. The August 15, 2018 accident was the fault of a third party, who was insured by Allstate Northbrook Indemnity Company (hereinafter referred to as "Allstate").

12. Plaintiffs initially took the Vehicle in to an autobody shop for inspection. After the inspection, the Vehicle was transferred to Defendants IOAK, KANG, and DOES 1 to 50's autobody shop to be repaired, without Plaintiffs' knowledge. Said transfer occurred in or about September of 2018.

13. After the transfer of the Vehicle to Defendants IOAK, KANG, and DOES 1 to 50's autobody shop, said Defendants stated to Plaintiffs that they would undertake to repair the Vehicle, made assurances to Plaintiffs that the Vehicle would be repaired, and stated on numerous occasions that repairs were ongoing.

14. Defendants IOAK, KANG, and DOES 1 to 50 reduced their representations to writing, assuring Plaintiffs and Allstate that, in exchange for moneys received by Allstate, said Defendants would repair the Vehicle. Said Defendants also made said representations orally to Plaintiffs on numerous occasions thereafter.

15. On or about September 18, 2018, Defendants 1OAK, KANG, and DOES 1 to 50 were issued a first check from Allstate in the sum of \$5,721.11 as compensation for the repairs. Said Defendants cashed said check on October 1, 2018.

1 16. Defendants IOAK, KANG, and DOES 1 to 50 insisted that further work needed to be done
2 on the Vehicle. As such, Allstate issued said Defendants a second check for \$4,882.63 on November 5,
3 2018. Defendants IOAK, KANG, and DOES 1 to 50 cashed said check the next day on November 6, 2018.

4 17. Defendants IOAK, KANG, and DOES 1 to 50, rather than fix the Vehicle, negligently
5 damaged it further.

6 18. Ultimately, Defendants IOAK, KANG, and DOES 1 to 50 utterly failed to repair the
7 Vehicle as promised.

8 19. The Vehicle remained undriveable, with a damaged engine, and still without the necessary
9 work done on the Vehicle, which Defendants IOAK, KANG, and DOES 1 to 50 promised to repair and
10 were paid to repair.

11 20. As would become evident in subsequent conversations late in 2019, Defendants IOAK,
12 KANG, and DOES 1 to 50 never had any intention of repairing the Vehicle, but instead intended to obtain
13 moneys from Allstate and fraudulently promised to Plaintiffs that said Defendants would be repairing the
14 Vehicle. Plaintiffs were not aware of Defendants IOAK, KANG, and DOES 1 to 50's intent to defraud
15 Plaintiffs until in or about December of 2019.

16 21. In or about December of 2019, Plaintiffs discovered that Defendants IOAK, KANG, and
17 DOES 1 to 50, had no intention of returning the Vehicle to Plaintiffs.

18 22. As a result, Plaintiffs have sustained special damages, including the value of the Vehicle,
19 cost of a replacement vehicle, loss of use of the subject Vehicle, out of pocket costs, and attorney's fees, all
20 in an amount exceeding the jurisdictional minimum of this Court. Further, given the intentional, malicious,
21 and fraudulent conduct exhibited by Defendants IOAK, KANG and DOES 1 to 50, Plaintiffs are entitled to
22 punitive damages.

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III.

FIRST CAUSE OF ACTION

BREACH OF WRITTEN CONTRACT

(On Behalf of All Plaintiffs Against All Defendants)

23. The allegations of Paragraphs 1 through 22, inclusive, are re-alleged and incorporated herein by reference.

24. In September of 2018, Plaintiffs and Defendants 1OAK, KANG and DOES 1 to 50, entered into a written agreement whereby said Defendants would repair the Vehicle in exchange for sums provided by the at-fault third party driver's insurance, Allstate.

25. Allstate provided payment for the repairs by way of two separate checks, both of which were cashed by Defendants 1OAK, KANG, and DOES 1 to 50.

26. As a result of the payments from Allstate, Defendants 1OAK, KANG, and DOES 1 to 50 received the consideration for the contract via Allstate. However, despite the express agreement to repair the Vehicle, Defendants 1OAK, KANG, and DOES 1 to 50 failed to do so and instead damaged the Vehicle further.

27. Plaintiffs, via Allstate, have performed all of the conditions, covenants and promises required by them to be performed in accordance with the terms and conditions of the parties' express written contract.

28. Defendants 1OAK, KANG, and DOES 1 to 50 materially breached their written agreement with Plaintiffs by failing and refusing to perform their promise to repair the Vehicle, which Plaintiffs discovered in or about December of 2019 via the Bureau of Automotive Repair Investigation.

29. Plaintiffs have made demands on Defendants 1OAK, KANG, and DOES 1 to 50 to pay the required sums of money to repair the Vehicle back to Plaintiffs, to pay for the value of the Vehicle, or, to repair the Vehicle as promised. Defendants 1OAK, KANG, and DOES 1 to 50 have failed and refused to do so.

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30. As a direct result of the breach of Defendants IOAK, KANG, and DOES 1 to 50 in the obligations pursuant to the written contract, Plaintiffs have incurred damages in an amount exceeding the jurisdictional minimum of this Court. Plaintiffs will seek leave of this Court to amend this Complaint when the exact amount of damages has been ascertained or will prove the same at the time of trial.

IV.

SECOND CAUSE OF ACTION

BREACH OF ORAL CONTRACT

(On Behalf of All Plaintiffs Against All Defendants)

31. The allegations of Paragraphs 1 through 30, inclusive, are re-alleged and incorporated herein by reference.

32. In September of 2018, Plaintiffs and Defendants 1OAK, KANG, and DOES 1 to 50, entered into an oral agreement whereby said Defendants would repair the Vehicle in exchange for sums provided by the at-fault third party driver's insurance, Allstate.

33. Allstate provided payment for the repairs by way of two separate checks, both of which were cashed by Defendants 1OAK, KANG, and DOES 1 to 50.

34. As a result of the payments from Allstate, Defendants 1OAK, KANG, and DOES 1 to 50 received the consideration for the contract via Allstate. However, despite the express agreement to repair Plaintiffs' vehicle, Defendants 1OAK, KANG, and DOES 1 to 50 failed to do so and instead damaged the Vehicle further.

35. Plaintiffs have performed all of the conditions, covenants and promises required by them to be performed in accordance with the terms and conditions of the parties' express oral contract.

36. Defendants IOAK, KANG, and DOES 1 to 50 materially breached their oral agreement with Plaintiffs by failing and refusing to perform their promise to repair the Vehicle, which Plaintiffs discovered on in or about December of 2019 via the Bureau of Automotive Repair Investigation.

37. The express oral agreement was ratified orally on numerous occasions in numerous conversations by and between Plaintiffs and Defendants 1OAK, KANG, and DOES 1 to 50 during the remainder of 2018 and all of 2019.

38. Plaintiffs have made demands on Defendants 1OAK, KANG, and DOES 1 to 50 to pay the required sums of money to repair the Vehicle back to Plaintiffs, to pay for the value of the Vehicle, or, to repair the Vehicle as promised. Defendants 1OAK, KANG, and DOES 1 to 50 have failed and refused to do so.

39. As a direct result of the breach of Defendants 1OAK, KANG, and DOES 1 to 50 in the obligations pursuant to the oral contract, Plaintiffs have incurred damages in an amount exceeding the jurisdictional minimum of this Court. Plaintiffs will seek leave of this Court to amend this Complaint when the exact amount of damages has been ascertained or will prove the same at the time of trial.

V.

THIRD CAUSE OF ACTION

NEGLIGENCE

(On Behalf of All Plaintiffs Against All Defendants)

40. The allegations of Paragraphs 1 through 39, inclusive, are re-alleged and incorporated herein by reference.

41. In September of 2018, Plaintiffs and Defendants 1OAK, KANG, and DOES 1 to 50 entered into an agreement whereby said Defendants would repair the Vehicle in exchange for sums provided by the at-fault third party driver's insurance, Allstate.

42. Once Defendants 1OAK, KANG, and DOES 1 to 50 entered into the agreement to repair the Vehicle, said Defendants possessed the duty to undertake said repairs with ordinary care.

43. However, Defendants 1OAK, KANG, and DOES 1 to 50 negligently damaged the Vehicle further by failing to use ordinary care to repair the Vehicle, a breach of their duty to Plaintiffs.

44. As a direct result of the breach of Defendants IOAK, KANG, and DOES 1 to 50 in the obligations to repair the Vehicle using ordinary care, Plaintiffs have incurred damages in an amount exceeding the jurisdictional minimum of this Court.

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VI.
FOURTH CAUSE OF ACTION
FRAUD

(On Behalf of All Plaintiffs Against All Defendants)

45. The allegations of Paragraphs 1 through 44, inclusive, are re-alleged and are incorporated herein by reference.

46. In September of 2018 and on several occasions thereafter, Defendants IOAK, KANG, and DOES 1 to 50 represented to Plaintiffs in personal oral conversations and in writing that they would repair the Vehicle. These representations were false and Defendants IOAK, KANG, and DOES 1 to 50 knew the falsity of these statements at the time they were made, or were reckless with respect to the truth or falsity of said representations and intended Plaintiffs to rely on said false representations. Plaintiffs were not aware of Defendants IOAK, KANG, and DOES 1 to 50's intent to defraud Plaintiffs until in or about December of 2019

47. Plaintiffs are now informed and believe and thereon allege that Defendants IOAK, KANG, and DOES 1 to 50 had no intention of repairing the Vehicle.

48. Plaintiffs reasonably relied on the representations of Defendants IOAK, KANG, and DOES 1 to 50, and otherwise would not have entered into an agreement with said Defendants.

49. Plaintiffs are now informed and believe and thereon allege that Defendants IOAK, KANG, and DOES 1 to 50 never intended to repair the Vehicle and instead intended to defraud Plaintiffs by pocketing money received from Allstate for the repairs, and failed to repair the Vehicle, all with malice toward Plaintiffs. Plaintiffs were not aware of Defendants IOAK, KANG, and DOES 1 to 50's intent to defraud Plaintiffs until in or about December of 2019

50. As a result, Plaintiffs sustained damages in an amount exceeding the jurisdictional minimum of this Court.

51. The acts of Defendants IOAK, KANG, and DOES 1 to 50 were malicious, fraudulent and oppressive, justifying an award of punitive damages.

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VII.

FIFTH CAUSE OF ACTION

CONVERSION

(On Behalf of All Plaintiffs Against All Defendants)

52. The allegations of Paragraphs 1 through 51, inclusive, are re-alleged and are incorporated herein by reference.

53. In September of 2018 and on several occasions thereafter, Defendants IOAK, KANG, and DOES 1 to 50 represented to Plaintiffs in personal oral conversations and in writing that they would repair the Vehicle. Plaintiffs ascertained in or about December of 2019 that these representations were false and that Defendants IOAK, KANG, and DOES 1 to 50 knew the falsity of these statements at the time they were made, or were reckless with respect to the truth or falsity of said representations and intended Plaintiffs to rely on said false representations.

54. Prior to the conversations of September of 2018 and at all times referenced herein in the instant Complaint, Plaintiffs had ownership and all relevant ownership rights to the Vehicle.

55. In or about December of 2019, given the facts as stated herein in this Complaint, it became clear that Defendants IOAK, KANG, and DOES 1 to 50 had wrongfully taken the Vehicle from Plaintiffs and interfered with Plaintiffs' ability to use the Vehicle.

56. Defendants IOAK, KANG, and DOES 1 to 50 wrongfully took the Vehicle, interfering in the Plaintiffs' usage the Vehicle, without Plaintiffs' consent.

57. As a result of Defendants IOAK, KANG, and DOES 1 to 50's wrongful taking of the Vehicle and interfering in the Plaintiffs' usage of the Vehicle, Plaintiffs suffered damages in an amount exceeding the jurisdictional minimum of this Court.

58. The acts of Defendants IOAK, KANG, and DOES 1 to 50 were malicious, fraudulent and oppressive, justifying an award of punitive damages.

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VIII.

SIXTH CAUSE OF ACTION

ACCOUNTING

(On Behalf of All Plaintiffs Against all Defendants)

59. The allegations of Paragraphs 1 through 58, inclusive, are re-alleged and are incorporated herein by reference.

60. Plaintiffs are unaware of the exact amounts owed to them by Defendants IOAK, KANG, and DOES 1 to 50 with respect to all of the amounts that said Defendants have received. The information necessary to ascertain those amounts is complex and strictly within said Defendants' control. Accordingly, Plaintiffs seek an accounting of those amounts.

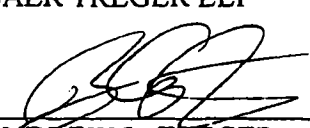
WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, for:

1. For compensatory damages in an amount to be determined according to proof at trial;
2. For special damages according to proof;
3. For loss of use damages according to proof;
3. For punitive damages according to proof;
4. For interest thereon at the prevailing legal rate;
5. For attorneys' fees and costs incurred herein;
6. For an accounting to determine the amount to be due from Defendants to Plaintiffs and an order for Defendants to pay said monies to Plaintiffs; and,
7. For such other and further relief as this court deems just and proper.

DATED: October 6, 2020

BAER TREGER LLP

BY:


ANDREW L. TREGER
ERIC G. RUDIN
Attorneys for Plaintiffs

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DEMAND FOR JURY TRIAL

PLAINTIFFS hereby request trial by jury on all claims and issues that are so triable.

DATED: October 6, 2020

BAER TREGER LLP

BY: 

ANDREW L. TREGER

ERIC G. RUDIN

Attorneys for Plaintiffs